87-406

Supreme Court, U.S.
FILED
SEP 8 1987
JOSEPH F. SPANIOL, JR
CLERK

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

EDITH MAE GRACEY,

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

EDITH MAE GRACEY, PRO SE
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EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. WHETHER THE DISTRICT COURT REVIEW OF THE FINAL ORDER OF THE BANKRUPTCY COURT HAS SATISFIED THE APPEALS COURT JURISDICTION REQUIREMENT TO QUALIFY AS AN APPEALABLE ORDER?

2. DID THE DISTRICT COURT CONSIDER THE MOTION TO REOPEN IN LIGHT OF ALL THE SURROUNDING CIRCUMSTANCES AND GRANT OR DENY IT IN THE INTEREST OF FAIRNESS AND SUBSTANTIAL JUSTICE?

3. WAS THE MEMORANDUM OPINION AND ORDER OF DISTRICT COURT EXCESSIVE BECAUSE PETITION WAS FILED BY A PRO SE FEMALE?

4. HAS A FEDERAL COURT OF APPEALS SO FAR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION ?

PARTIES TO THE PROCEEDINGS

In addition to the party listed in the caption the following participated below as adverse parties:

MERIDIAN BANK, a/k/a
AMERICAN BANK AND TRUST CO. OF PA.

C. DENSON & BARBARA M. DAY

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OPINIONS BELOW

The opinion of the Court of Appeals is attached as Appendix A. The Memorandum Opinion and Order of the United States District Court Eastern District of Pennsylvania is attached as Appendix C.

JURISDICTION

The opinion of the Court of Appeals (Appendix A) was entered on May 18,1987. The decision for Rehearing (Appendix B) was filed on June 8,1987.

Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), and U.S.C.S.Court Rules Supreme Court,Rule 17.1(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S.C.S.Constitution,Amendment five:

> "nor be deprived of life, liberty,or property,without due process of law;.."

STATEMENT OF THE CASE

On June 25,1986, the petitioner filed a"Motion For The U.S.District Court,Eastern District of Pennsylvania To Withdraw The Debtors Case From The Bankruptcy Court,Eastern District of Pa. For Cause Shown". On November 28,1986 the Motion was denied and remanded to the Bankruptcy Court by Judge Weiner.The "Cause Shown" contained many issues for review- including an Order by Bankruptcy Judge Twardowski converting Chapter 13

to Chapter 7(for liquidation of petitioners home and two nursery schools livlihood which bear very little debt). On March 10,1987 the petitioner filed in the District Court a "Petition To Recall Order Of 11/28/86 By Judge Charles R.Weiner" . The purpose was to reopen the case and address the conversion order and present new evidence . The sole basis of the Opinion of November 28,1986 had been the invalid Amended Proof of Claim from Meridian/American Bank- no other issue was addressed.

The opinion filed by Judge Weiner on March 27,1987 denied the Petition To Recall stating "If any further frivolous proceedings are filed by this debtor in this court, appropriate sanctions shall follow."(Appendix C).

The Court of Appeals dismissed the appeal on May 18,1987 " for want of an appealable order.Rehearing in banc was denied on June 8.

ARGUMENT

POINT 1

WHETHER THE DISTRICT COURT REVIEW OF THE FINAL ORDER OF THE BANKRUPTCY COURT HAS SATISFIED THE APPEALS COURT JURISDICTION REQUIREMENT TO QUALIFY AS AN APPEALABLE ORDER?

The final order of Judge Twardowski was reviewed by the District Court in the June 25, 1986 MOTION TO WITHDRAW CASE. Therefore the following decision is relevant: "when the District Court reviews a final order of the Bankruptcy Court-Appeals Court in essence reviews final order". Marin Motor Oil, Inc, 689 F 2d 445(3rd Cir. 1982, cert den, 459 US 1207, 103 S.Ct. 1196, 75 L. Ed2 440(1983)(at page 448).

POINT 2/3

DID DISTRICT COURT CONSIDER MOTION TO REOPEN IN LIGHT OF ALL SURROUNDING CIRCUMSTANCES AND DENY IN INTEREST OF FAIRNESS AND JUSTICE?

OR

WAS THE MEMORANDUM OPINION AND ORDER OF DISTRICT COURT EXCESSIVE BECAUSE PETITION WAS FILED BY A PRO SE FEMALE WHICH DEPRIVES HER OF PROPERTY AND DUE PROCESS OF LAW?

All prior appeal efforts of the petitioner were denied for "nonappealable order"-no other

court having heard the case-due process of law required the surrounding circumstances(of the liquidation of all property and livlihood) be responded to by reopening the case-to achieve justice. Zenith Radio Corp. v. Hazeltine Research,Inc. (1971)401 US 321,91 SCt 795,28L ed2d 77,citing Treatise.

The Memorandum Opinion and Order of Judge Weiner on March 27,1987 was excessive and an abuse of discretion. Taylor v.Washington Terminal Co.,(CA DC,1969) 409 F2d 145,cert den (1969)396 US 835,90 S Ct 93,24 L ed2d 85. The protection of property is not a"frivolous action requiring sanctions". The female pro se petitioner is prevented from the due process of filing in the U.S.District Court.Const.5th. "ends the litigation before this court".

POINT 4

HAS COURT OF APPEALS SO FAR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT,AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION?

The petitioner,Edith M.Gracey,has filed

documents with the Court of Appeals proving creditor conspiracy to prevent Confirmation Order and repayment plan (said Order would prevent liquidation). Three Orders from Judge Weiner appear to be contrary to the evidence and do not address the merits of the case and further,are all prejudicial to the two wealthy creditors (Day and Meridian/American Bank). Facts contained in the MOTION TO WITHDRAW CASE (D.C.Misc.86-0292) prove fraud, judicial error, discrimination against the petitioner,inadequate legal representation- also contained in U.S.Supreme Court docket A67 "Petition For Stay " filed on July 21,1987 (denied on July 8,1987). Meridian/American Bank (one of two adverse creditors who are both oversecured) Amended Proof of Claim awaits a decision from Judge Twardowski from May 5,1987 Hearing and Briefs to Objection.

Bankruptcy Rule 8003(c) and 28USC2103 allows the Court to treat the Notice of Appeal as Leave To Appeal. This is the only court to allow the petitioner any hope for justice.

". If interlocutory Order of the District Court fails to address merits of the case, appeal will lie only if appellant can show some serious, perhaps irreparable harm resulting from delay caused by denial of review". Center for Nat.Sec.Studies v. CIA 1983,711 F,2d 409,229 U.S.App D.C. 131. The loss of petitioners home and two nursery schools,plus her livlihood, will result in irreparable harm.

CONCLUSION

For the foregoing reasons,the petitioner respectfully requests that a Writ of Certiorari be issued to supervise and review the opinions and orders of the lower courts.

Respectfully submitted,

Edith Mae Gracey

Edith Mae Gracey,Pro Se

CERTIFICATE OF SERVICE

UNITED STATES OF AMERICA)
: ss.
)

COMES NOW Edith M.Gracey,and after having been duly sworn,states as follows:

1.That I am representing myself Pro Se.

2.That on September 8,1987,I hand timely delivered 40 copies of the foregoing Petition for Writ of Certiorari to the U.S.Supreme Court, Clerks Office in Washington,D.C.

3.That on September 9,1987 I deposited 3 copies of the foregoing Petition for Writ of Certiorari in the U.S.Mail,prepaid to each of the following parties required to be served:

Solicitor General of the United States
Department of Justice
Washington,D.C. 20530

Frederick Reigle,Esquire (Bankruptcy Trustee)
P.O.Boxx 4010
Reading,Pa.19606

Kurt Althouse,Esquire(Meridian Counsel)
P,O.Boxx 61
Reading,Pa.19603

Mark Tunnell,Esquire(Day Counsel)
P.O.Box 562
West Chester,Pa.19381-0562

[redacted] SUBSCRIBED [redacted]
[redacted] DAY OF September 87

Norita R. King
NORITA R. KING, Notary Public
Boro of Shillington, Berks County, Pa.
My Commission Expires Dec 3, 1989

Edith Mae Gracey

8 Edith Mae Gracey,Pro Se

APPENDIX " A "

UNITED STATES COURT OF APPEALS THIRD CIRCUIT

C.A.NO. 87-1190

IN RE: EDITH M.GRACEY
DEBTOR

(E.D.Pa.Misc.No. 86-0292)

(Related to E.D.Pa.Bky.No.84-00778T)

Present: WEIS,BECKER, and HUNTER,CIRCUIT JUDGES

"The foregoing appeal is dismissed

for want of an appealable order"

By the Court,

s/ Weis
Circuit Judge

Dated: May 18, 1987

APPENDIX " B "

UNITED STATES COURT OF APPEALS THIRD CIRCUIT

NO. 87-1190

IN RE: EDITH M.GRACEY,DEBTOR

a/k/a MRS.J.RAYMOND GRACEY

(D.C.MISC.NO. 86-0292)

SUR PETITION FOR REHEARING

Present:GIBBONS,CHIEF JUDGE,SEITZ,WEIS,
HIGGINBOTHAM,SLOVITER,BECKER,STAPLETON,
MANSMANN,AND HUNTER,*CIRCUIT JUDGES.

The petition for rehearing filed by Debtor, Edith M.Gracey,in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service,and no judge who concurred in the decision having asked for rehearing,and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc,the petition for rehearing is denied.

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* As to panel rehearing only.

BY THE COURT,

Dated:June 8, 1987

s/ Weis

APPENDIX " C "

UNITED STATES DISTRICT COURT EASTERN DIST.PA.

IN RE: EDITH M.GRACEY : MISC.NO. 86-0292

DEBTOR/a/k/a MRS.J.RAYMOND GRACEY

MEMORANDUM OPINION AND ORDER

WEINER,J. MARCH 27.1987

ON NOVEMBER 28 1986 this court filed a Memorandum Opinion and Order denying the Motion of the debtor to withdraw the debtor's case from the United States Bankruptcy Court for this district and the case was remanded to the Bankruptcy Court.The debtor appealed to the United States Court of Appeals for the Third Circuit which dismissed the appeal.On February 6.1987 the Court of Appeals filed an order denying the debtor's petition for rehearing. Presently before this court is the petition of the debtor to recall our order of November 28.1986.That petition is denied.

After our refusal on November 28.1986 to withdraw the case from the Bankruptcy Court.

Court of Appeals dismissed debtor's appeal from that order.Now the debtor petitions for this court to recall the November 28, 1986 order.There must be an end to litigation someday,and our order of November 28,1986 affirmed by the Court of Appeals by dismissing the debtor's appeal.ends the litigation before this court.

If any further frivolous proceedings are filed by this debtor in this court, appropriate sanctions shall follow.

ORDER

The petition of the debtor to recall this court's order of November 28,1986 is DENIED.

IT IS SO ORDERED.

s/Charles R.Weiner